

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Ashton Post Office,
Ashton, Iowa

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Docket No. A2012-97

REPLY COMMENTS OF THE PUBLIC REPRESENTATIVE
IN SUPPORT OF PETITIONERS' APPEALS

(February 17, 2012)

I. INTRODUCTION

On December 29, 2011, the Commission issued Order No. 1085¹ which accepted the Petitioners' appeals of the Postal Service's final determination to close the Ashton Post Office and established a procedural schedule to adjudicate the appeals. Pursuant to the procedural schedule, the Postal Service filed the Administrative Record on December 27, 2011² and filed comments regarding the appeal on February 2, 2012.³ These Public Representative comments respond to the Postal Service's Comments and

¹ Order No. 1085 - Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 29, 2011 (Order).

² United States Postal Service Notice of Filing Administrative Record, December 27, 2011 (Administrative Record). The Postal Service's final determination to close the Ashton Post Office is Item No. 47 of the Administrative Record (Final Determination).

³ United States Postal Service Comments Regarding Appeal, February 2, 2012 (Postal Service Comments).

are in support the Petitioners' appeals seeking to remand the Postal Service's Final Determination to close the Ashton, Iowa Post Office.

II. FAILURE TO CONSIDER THE ISSUE OF TIME SENSITIVE MAIL

In its initial appeal⁴ and again in its participant statement,⁵ Ashton State Bank argues that the Postal Service failed to consider, in making its final determination, the issue of time sensitive mail.⁶ Specifically, Ashton State Bank states "Nowhere in this document [the Final Determination] does [the Postal Service] state that someone brought to their attention that time sensitive mail is an issue."⁷ In its comments, the Postal Service's counsel attempts to gloss over this issue by stating that it "understands Petitioners' concern regarding the late pickup of sensitive mail and the fact that the Bank cannot send and receive mail at the same time through the rural carrier."⁸

While the Postal Service's counsel may "understand" that concern, the Commission "of course, cannot 'accept appellate counsel's post hoc rationalizations for agency action'; for an agency's order must be upheld, if at all, 'on the same basis articulated in the order by the agency itself.'" *LePage's 2000, Inc. v. Postal Regulatory Commission*, 642 F.3d 225 (DC Cir. 2011) (quoting *Fed. Power Comm'n v. Texaco Inc.*, 417 U.S. 380, 397 (1974) and *Burlington Truck Lines, Inc. v. United States*, 371 U.S.

⁴ Petition for Review Received from Ashton State Bank Regarding the Ashton, IA Post Office 51232, December 9, 2011 (Ashton State Bank Appeal).

⁵ Participant Statement Received from Ashton State Bank, January 13, 2012 (Ashton State Bank Participant Statement).

⁶ The issue is simple enough, and has been explained many times by Ashton State Bank in its letters, survey responses, and presentations to the Postal Service. See e.g., Administrative Record, Item No. 22. Its "time sensitive mail" concern is that Ashton State Bank receives mail in the morning, processes and responds to such mail during the workday, and then mails out those time sensitive responses at the end of day to be entered into the mailstream that same day.

⁷ Ashton State Bank Appeal at 2.

⁸ Postal Service Comments at 7. The Postal Service then tellingly attempts to provide support for this understanding by pointing, not to the Final Determination as is required under the Administrative Procedure Act, but rather to Customer Questionnaire Responses and Postal Service Response Letters. *Id.*

156, 168-69 (1962)). Thus, for the Final Determination to be upheld, it must be upheld on the basis articulated by the Postal Service in its final determination.⁹ As a corollary, just because the Postal Service includes a copy of a letter in the Administrative Record or writes a letter back to a petitioner that says “thank you for your letter” does not mean that the concern was taken into account by the agency in making its final determination.¹⁰ To determine if the Postal Service actually took Ashton State Bank’s concern into account in making its final decision, the Commission must look at the Final Determination, and only the Final Determination.

This is especially true, here, where the Postal Service has repeatedly made clear that the final decision maker in post office closing cases is Dean J. Granholm, Vice President of Delivery Operations. See e.g., Final Determination at 11. It has also repeatedly explained that other Postal Service representatives are merely “messengers.”¹¹ The Postal Service cannot have it both ways. It cannot claim that everyone besides Mr. Granholm is a messenger with no decision-making authority on post office closings, yet attempt to point to letters written by those very non-decision-makers claiming that it considered such issues in making final determinations.

A review of the Final Determination clearly shows that the Postal Service did not consider time sensitive mail in making its final decision to close the Ashton Post Office. In the Final Determination, the Postal Service states that the following concerns were raised regarding mail delivery and collection:

Concern: Customers expressed a concern about irregular hours that the rural route serves the community.

Response: Carriers strive to provide service at approximately the same time on a daily basis, however, mail volumes and weather conditions often affect delivery times.

Concern: Customers expressed a concern about collection of outgoing mail.

⁹ *Butte County v. Hogan*, 613 F.3d 190, 194 (D.C. Cir. 2010) (“An agency’s refusal to consider evidence bearing on the issue before it constitutes arbitrary agency action.”)

¹⁰ Indeed, if that were true, an administrative agency could circumvent the Administrative Procedure Act’s requirements by simply including comments in Administrative Records without referring to them at all in their final determinations.

¹¹ See e.g., Ashton State Bank Appeal at Attachment Presentation Notes at 3; Administrative Record, Item No. 22 at 42-44.

Response: Collection of mail will be made by the carrier when serving the route. The customer should raise the flag on the mailbox to alert the carrier that outgoing mail is to be collected from the mailbox. The cluster box units will have an outgoing mail slot that can be used by anyone wishing to drop off outgoing mail.

Concern:¹² Customers were concerned about later delivery of mail.

Response: The top priority of the Postal Service is to provide mail service in the most efficient manner possible because all of our costs are reflected in postage rates customers must pay. Delivery costs are one of our biggest expenses, so you can be assured that careful thought is given to the structure of each route. A customer's location on a carrier's line of travel determines the time of day mail is delivered. This, of course, precludes providing early delivery of mail to every customer because, no matter how we structure a route, somebody must be last. We do, however, carefully consider the volume of mail for each route so that we can deliver the greatest amount of mail at the earliest possible hour. With the largest fleet of delivery vehicles in the world, to minimize vehicle and fuel expenses we must also pay special attention to energy conservation measures. When the price of gasoline goes up one cent per gallon our total gasoline cost rises by more than \$1 million. Therefore, when structuring a route, we must balance our goal to deliver as much mail possible as early as possible with the need to minimize the travel distance a route must cover. We do regret the inconvenience to customers who would like, but cannot receive, early mail delivery. For those customers, we offer alternative delivery services, such as Post Office box service that provide access to their mail earlier and throughout the day.

See Final Determination at 2, 3, 6, 7. As the Commission can clearly see,¹³ the concerns above related to the delivery and collection mail do not address those concerns related to time sensitive mail repeatedly raised by Ashton State Bank. Even the Postal Service did not attempt to state in its comments that such statements were responsive to Ashton State Bank. See *generally* Postal Service Comments.

Even if the Commission were to review the non-decision-makers' response letters to Ashton State Bank, it would find that the non-decision-makers' did not understand or failed to consider the time sensitive mail issue repeatedly raised by Ashton State Bank during the discontinuance process. The non-boilerplate parts of the non-decision-makers' responses to Ashton State Bank's letters relating to the time sensitive mail concern are as follows:

- You expressed a concern about why the postmaster position was not filled. All management positions were frozen in anticipation of the reorganization efforts.

¹² The identical concern was also raised on page 7 of the Final Determination and an almost identically worded response was provided with the exception that it was stated: "When the price of gasoline goes up one cent per gallon our total gasoline cost rises by more than \$8 million." Final Determination at 7.

¹³ This is notwithstanding the fact that the font size used by the Postal Service in its Final Determination is quite small.

- The officer in charge position is considered only a temporary position until a postmaster is assigned or the office is discontinued. If the office were to remain open, the Postal Service would be required to fill the position with a full time postmaster who would have benefits.
- With the loss of 32 million dollars a day, the Postal Service is aggressively seeking means to reduce expenses. The Postal Service has successfully reduced expenses by 12 billion dollars over the past 4 years, reduced the workforce by 34% since 2000, and has been studying mail processing facilities and stations for discontinuance. The Postal Service has been able to achieve this without layoffs and meeting record levels of service. However, these expense saving measures have not been enough to slow the loss of 32 million a day. As a result, every level within the Postal Service is evaluated to see if there is a means of performing the service in a more cost effective manner. Rural delivery to the Ashton community is a means of providing effective and regular service in a more cost effective manner.

Administrative Record, Item No. 22 at 42-44.

Had the Postal Service stated, in its Final Determination, that it “understood Ashton State Bank’s concern regarding time sensitive mail, but believed that other factors, such as [whatever factors the Postal Service thought were more important] outweighed this concern” such action would have demonstrated that the Postal Service considered the issue. But here, the Commission is not left with anything of the sort. Instead, in issuing the Final Determination on behalf of the Postal Service, Mr. Granholm was silent on whether he considered the issue. The Commission is left to speculate as to whether it was considered when the Final Determination was made. Of course, for such action to be upheld, speculation is not enough. The Commission must have assurance that the Postal Service considered the issue, and here there is none. Therefore, the Commission should remand the Final Determination back to the Postal Service to consider whether discontinuance is warranted in light of Ashton State Bank’s concerns regarding time sensitive mail.

III. THE POSTAL SERVICE’S CONCEDES THAT IT FAILED TO CONSIDER A COMMUNITY CONCERN AS REQUIRED BY 39 U.S.C. 404(d)

In its comments, the Postal Service implicitly admits that it did not take into consideration the costs borne by customers to travel to other post offices. Postal Service Comments at 14. The Postal Service clearly states that “[s]uch costs are not, however, required to be included in the economic savings calculation.” Postal Service Comments at 14. It may be true, as the Postal Service argues that such costs are not

required to be taken into account under the “economic savings” prong of the statutory criteria of section 404(d)(2)(A)(iv).¹⁴ However, that does not mean that the Postal Service should be ignoring such concerns and not taking such costs into account. These costs borne by customers to travel to other post offices are clearly part of the “effect on the community” and, as such, must be considered under section 404(d)(2)(A)(i). Because the Postal Service admittedly did not take such concerns into account under 404(d)(2)(A)(i), the Commission should remand the Final Determination to the Postal Service so that it can adequately take into account the costs borne by customers to travel to other post offices as a consideration of the effect on the community.

IV. CONCLUSION

For the reasons discussed above in these reply comments, the Public Representative supports the Petitioners’ appeals seeking to remand the Postal Service’s Final Determination to close the Ashton, Iowa Post Office.

Respectfully Submitted,

/s/ Robert Sidman

Robert Sidman

Public Representative for
Docket No. A2012-97

901 New York Avenue, N.W., Suite 200
Washington, DC 20268-0001
(202) 789-6827; Fax (202) 789-6891
e-mail: robert.sidman@prc.gov

¹⁴ The Public Representative does not take a position at this time on the appropriateness of this argument.